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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,696	10/21/2003	Francois Cottard	06028.0028-00	9761

22852 7590 05/23/2005

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,696

Applicant(s)

COTTARD ET AL.

Examiner

Eisa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1 This action is responsive to the remarks filed on March 10, 2005.

2 Claims 1-56 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent et al. (US 2002/0046431 A) in view of Cotteret et al. (US 5,868,800), for the reasons set forth in the previous office action filed on November 10/ 2004.

Response to Applicant's Arguments

3 Applicant's arguments filed 3/10/2005 have been fully considered but they are not persuasive.

With respect to the rejection of the claims under 35 U.S.C. 103(a) over Laurent et al. (US' 431 A1) in view of Cotteret et al. (US' 800), Applicant argues that there is no motivation would have existed to combine the cited references because the problems to be solved by the references have nothing to do with the incorporation of fatty acids in the dyeing compositions taught by the references. Applicant also argues that there is no suggestion that one skilled in the art would have selected lauric acid to replace any fatty acid in Laurent's composition. Further, applicant argues that there is no reasonable expectation of success.

The examiner respectfully disagrees with the above arguments because the use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain. "*In re Heck*, 699 F.2d 1331, 1332-33 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Iemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). Further, a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. *Merck & Co. v. Biocraft*

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Laboratories, 874 F.2d 804, 10 USPQ2d 1843 (Fed.Cir.), *cert. denied*, 493 U.S. 975 (1989). In this case, Laurent et al. (US' 431 A1) teaches a hair dyeing composition comprising oxidation dyes (see page 1, paragraph, 0019), cationic poly(vinyl lactam) polymers (see page 6, paragraphs, 0155-0166 and page 7, paragraphs, 0167-0177) and fatty acid oleic acid (see page 22, paragraph, 0493). Cotteret et al. (US' 800) as a secondary reference clearly teaches a dyeing composition comprising lauric acid (see col. 4, Example 1 and col. 5, Example 2) wherein the dyeing composition results in an intense chestnut-brown shade (see col. 6, lines 23-25). Cotteret et al. (US' 800) also teaches a dyeing composition comprising oleic acid (see col. 6, Example 3) and wherein the composition results in an intense dark blonde shade (see col. 7, line 10) and, thus, Cotteret et al. (US' 800) teaches the equivalence between oleic acid and lauric acid in the dyeing compositions that lead to the formulation of intense shade of colors. Therefore, there is a sufficient motivation to one having ordinary skill in the art to formulate a hair dyeing composition by replacing the oleic acid in the dyeing composition of Laurent et al. with the lauric acid as taught by Cotteret et al. to make such a composition with the reasonable expectation of success of obtaining dyeing compositions having similar properties to those claimed.

With respect to the argument based on the comparative studies in the Examples, the examiner would like to point out that the comparative studies are not commensurate in the scope with the teaching of the prior art because the prior art composition does not teach or disclose stearic acid that used in the comparative studies. Further, applicant has not shown on record the criticality of claimed composition that comprises lauric acid over the composition of closest prior art that teaches oleic acid.

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With respect to the rejection of claims 16-17, 22 and 41-42, applicant argues that there is no motivation to optimize the cationic poly(vinylactum), the fatty acids and surfactants in the dyeing composition.

The examiner respectfully disagrees with the above argument because Laurent et al. teaches a dyeing composition comprising at least one cationic amphiphilic polymers in the amount of 0.01 to 3% by wt. (see page 26, claim 45), fatty acid such as oleic acid in the amount of 2% (see page 22, paragraph 0493) and effective amounts of at least one agent conventionally used in oxidation dyeing such as surfactants (see page 21, paragraph, 0466). Therefore, there is a sufficient motivation to a person of the ordinary skill in the art to optimize the amounts of cationic polymers, fatty acids and surfactants in the dyeing composition in order to get the maximum effective amounts of these ingredients in the composition.

With respect to the rejection of claims 55-56, applicant argues that there is no motivation to make the claimed composition comprised in the kit as claimed.

The examiner respectfully disagrees with the above argument because Laurent et al. clearly teaches a device or kit for dyeing hair comprising at least two compartments (see page 27, claim 66). Therefore, there is a sufficient motivation to one having ordinary skill in the art to use any number of compartments for holding the dyeing ingredients. Therefore, the combination of the references is proper and the prima facie case of obviousness has been established.

4 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Patent Examiner
Art Unit 1751

May 18, 2005